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ANPPCAN Kenya 1998

Children in the Dock

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CHILDREN IN THE DOCK

A SITUATION ANALYSIS OF
THE JUVENILE JUSTICE
SYSTEM IN KENYA

ANPPCAN KENYA 1998

ANPPCAN KENYA CHAPTER

ANPPCAN Kenya is the Kenyan chapter of the Africa-wide child welfare organisation the *African Network for the Prevention and Protection against Child Abuse and Neglect*. ANPPCAN Kenya is a not-for-profit independent non-governmental organisation supported by donors both inside and outside Kenya. Its overall goal is to improve the welfare of children in Kenya and to enhance opportunities for the development of their full potential by offering services to targeted groups of children and their families.

ANPPCAN Kenya's objectives are to facilitate the promotion, defence, and advocacy of children's rights and to serve as a national centre for the prevention of child abuse and neglect and the protection of children who are victimised and marginalised. It is an advocacy group concentrating on issues relating to the laws affecting children, particularly the implementation of such laws.

Towards this end, ANPPCAN Kenya creates awareness and stirs sensitivity with the aim of provoking each individual to recognise and accept his or her moral responsibility to stand up for the rights of the child. ANPPCAN Kenya also provides free legal advice and where necessary litigation to children who are victims of abuse and neglect, or those acting on their behalf. The organisation uses as its basis the African Charter on the Rights and Welfare of the Child (1990) and the UN Convention on the Rights of the Child (1989) to which Kenya is a signatory, as well as the guidelines in the Beijing Platform of Action (1995) known as the Beijing Rules. In carrying out its mandate, ANPPCAN works with central and local government offices, NGOs, and the community in general.

Although ANPPCAN was established in 1989 by a group of volunteers concerned with the plight of children, it did not become

fully operational until 1995, when a formal secretariat was opened. It now runs one large action-oriented Programme, the Children's Rights Awareness and Legal Education Programme (CRALEP), which includes an outreach component on children's rights advocacy with a field office in Korogocho. The ANPPCAN Kenya head office is located on Muhoho Avenue in Nairobi South C.

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EXECUTIVE SUMMARY

Children in the Dock: A Situation Analysis of the Juvenile Justice System in Kenya is a report on the administration of juvenile justice in Kenya. It is based mainly on research into the juvenile court records for the year 1997. To contextualise the data provided by the court records, background research was also undertaken, including interviews with a number of children who have passed through the juvenile justice system for one reason or another.

The purpose of the study was to critically examine the administration of juvenile justice in Kenya, identify shortcomings in the laws or procedures, and develop a set of recommendations that can be used to improve the system. The specific objectives of the study were:

- to determine the average number of cases and the gender ratios of offenders who appeared before the juvenile court
- to identify the geographical areas where juvenile suspects were arrested
- to ascertain the kinds of offenses that juvenile suspects were charged with
- to establish the average time it took to finalise cases
- to identify the case disposal methods.

The data collected from the court records was classified and analysed according to the following criteria:

- nature of the charge
- number of arrests
- gender of the arrested children
- police station where the arrested children were held
- duration of stay in remand (where applicable)
- case disposal method.

Of the 1,864 children who passed through the juvenile court system in 1997, the overwhelming majority (85%) were boys. The most common offense with which children were charged was vagrancy, which accounted for more than 70% of all cases. Three-quarters of those charged with vagrancy were boys. A single police station, Central Police Station in downtown Nairobi, accounted for almost half of all the arrests of children in 1997.

The most common disposal method was found to be repatriation to the child's home area. This accounted for 16.8% of the cases that were resolved. Another 14.1% were committed to approved schools, while 8.7% were either acquitted, had their cases withdrawn, or were handed over to guardians. Only 0.6% were fined and 0.9% caned. However, in almost 60% of cases the court records do not indicate what happened to the children. This leads us to conclude that most were still in remand at the end of the year.

The duration of stays in remand could not always be determined due to the inadequacy of court records. The initial duration after first appearance in court is usually two weeks, but this is often renewed indefinitely until the case is finalised. There appears to be no limit on how long a child can be held in remand.

The evidence collected indicates that children in conflict with the law are not provided with any assistance to help them understand the justice system. No legal representation is provided, and for many children there are no parents, guardians, or child-care officers to help. There was evidence that the child-minders, in the form of the police and other administration officers, far from supporting and helping these children, frequently intimidate and manhandle them. For these reasons, children feel helpless and unwanted and come out of the system badly shaken and traumatised.

The main recommendations for improving the administration of juvenile justice that arise from this study are:

- ❑ Children in the juvenile justice system should not be treated like common criminals. Staff who handle juvenile cases must respect the children's rights, help them get legal and parental assistance, and ensure that the whole process is carried out with the involvement and in the best interests of the children.
- ❑ Judgements in cases involving juvenile offenders need to be informed by the social circumstances surrounding the case. Poverty should not be treated as a crime, and children should only be deprived of their liberty as a last resort. Cases should take the shortest period possible before resolution.
- ❑ A set of guiding principles should be formulated to guide law enforcement personnel in dealing with juvenile cases. These guidelines should be in line with those of the UNCRC, the OAU Charter on the Rights and Welfare of the Child, and the United Nations Standard Minimum Rules on the Administration of Juvenile Justice (1985), commonly known as the Beijing Rules.
- ❑ There is also an urgent need to improve the methods of documentation of cases that pass through the juvenile justice system. All the players in the juvenile justice system must make a systematic effort to ensure that comprehensive information on cases involving children is recorded and stored properly.

- ❑ Children in need of special protection have to be made aware of their rights and how to exercise them. Law enforcement officers working in the juvenile justice system and the public at large also need to be made aware of children's rights. This is especially critical for police officers, as they seem to be insensitive to the rights of juvenile suspects and often act like child abusers.
- ❑ Many children end up in the streets — and in conflict with the law — because they are out of school. There is a need to examine what makes children drop out of school. Primary school education should be made universally free and compulsory.

GLOSSARY

ANPPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
Askaris	A Kiswahili word referring to private security guards and city council guards
Chuom	A slang word referring to street dwellings occupied by children
CRALEP	Children's Rights Awareness and Legal Education Programme, a project of ANPPCAN-Kenya
Jua kali	A Kiswahili word referring to the small-scale artisan and entrepreneur sector
Mahindra	An Indian-manufactured jeep used by the Kenyan police
OAU	Organisation of African Unity
SAPs	Structural Adjustment Programmes
Sukuma wiki	A green leafy vegetable (kale)
Ugali	A stiff porridge made from either maize meal or millet
UNCRC	United Nations Convention on the Rights of the Child

1 INTRODUCTION

Duly constituted by the Children and Young Persons Act, the juvenile court is one type of court amongst several in the Kenyan justice system. It is set aside for hearing all cases where the accused are below 18 years of age, i.e. below the age of legal majority. The juvenile court system is a legal entity that consists of a number of individual juvenile courts.

The Nairobi Juvenile Court is the only physically separate juvenile court in Kenya. It is located on Parliament Road, off Haile Selassie Avenue, next to the Professional Centre. The court is presided over by three magistrates. Though primarily established as a juvenile court and housed in its own building, adult cases are now being heard in the court, though at separate times from children's cases. Elsewhere in the country, juvenile courts only operate at distinct times within the same court building used by adults. In some areas, *ad hoc* juvenile courts are constituted only if and when a juvenile is arrested.

The Nairobi Juvenile Court sits for three days per week, Monday, Wednesday, and Friday. The proceedings, conducted in Kiswahili and English, are closed to the public. The only people allowed into the court are the parties to the case, witnesses, parents or guardians, probation officers, children's officers, and court clerks, though the court can authorise anyone else to be present.

On days that the court is in session, accused children are brought in the morning from one of the two holding cells located in an enclosed courtyard behind the main court building or directly from police stations or remand homes. All references to the court in this report refer to the Nairobi Juvenile Court.

The following analysis of data from the court reveals an urgent need to reform various aspects of the juvenile justice system. A key activity of ANPPCAN Kenya is to lobby for the necessary reforms to ensure that the treatment of accused children is as fair and humane as possible in accordance with the provisions of the UNCRC, OAU Charter, and Beijing Rules. This report is therefore intended as a reference tool for addressing the shortcomings of the juvenile justice system through amendments to the laws or procedures, the provision of better facilities, and the training of personnel.



Children at the juvenile court after being arrested in the streets of Nairobi

1.1 Background

Children, whether living as members of a traditional family or otherwise, are subjects of social responsibility, public policy, and law making. They face problems that arise in all societies, but the particular character of these problems varies from one society to the other.

Children are the most vulnerable section of society. They bear the brunt of the consequences of any social misbehaviour or economic maladministration, and their situation in life depends upon the discharge of parental duties of care and sustenance. In developing countries, the family situation often reflects conditions of poverty and hardship.

The major categories of children in need of special attention and legal protection in Kenya today include street children, child labourers, refugee children, handicapped children, children under the age of three accompanying mothers to prison, children born out of wedlock and lacking parental care, Aids orphans, and children in institutions such as approved schools or juvenile remand homes. These categories are collectively referred to as *children in need of special protection*.

The laws relating to the welfare and protection of children in Kenya, originally scattered under numerous statutes, are now in the process of being consolidated under a comprehensive new Children's Bill. But for the majority of Kenyans, the laws on children — and even the new Children's Bill — are inaccessible. This is not just because of the limited circulation of legal information in society but also because of the obscure and difficult language in which the laws are written.

Another problem hindering the legal protection of children in Kenya has to do with the lack in both rural and urban areas of established public agencies, for example legal awareness centres, for counselling and informing communities on the legal rights of the child. The problem is aggravated by a shortage of lawyers at district level. There is no government-supported legal aid programme even for the adult population. Given the high cost of legal representation and the poverty in which the majority of Kenyans live, most parents or guardians cannot afford lawyers' fees even when their children's rights have been violated.

Under existing laws and practices, child law is enforced on the premise of protecting society from the errant child rather than protecting the child from errant members of adult society. Therefore, it is common for children found roaming the streets to be arrested for no apparent reason and treated as vagrants, even though the vagrancy act no longer applies. This practice has been justified on the principle that children need care and protection under the Children and Young Persons Act. However, close scrutiny shows that the objective is to "clean up" the streets and not to protect the children.

For these reasons, the administration of juvenile justice in Kenya leaves a lot to be desired, especially with regard to the treatment of juvenile offenders within correctional institutions such as juvenile remand homes and juvenile courts. This study has been undertaken in an attempt to identify the loopholes in the administration of juvenile justice and come up with concrete recommendations aimed at improving the system.

1.2 Objectives of This Study

The general objectives of this study were to analyse the activities of the juvenile justice system, identify problems, and make recommendations for legal and procedural reforms. The specific objectives were:

- to determine the number of cases which passed through the Nairobi Juvenile Court during 1997
- to identify the areas in which children were rounded up and arrested
- to analyse the gender ratios of the cases which passed through the juvenile court
- to establish the nature of charges preferred against the subjects arrested and arraigned before the magistrates
- to analyse the disposal methods preferred by magistrates
- to determine the time it took for cases to be disposed of
- to formulate recommendations to submit to the government in order to initiate policy discussions and bring about changes in the administration of juvenile justice.

1.3 Methodology

Data was collected from the juvenile court for a period of twelve months (January to December 1997) using the court files and registers. To facilitate analysis, the data was grouped into the following categories:

children in the dock

- area of arrest (police station)
- name of the subject (the child charged with an offense)
- sex of the subject
- nature of the offense(s) and charge(s) preferred
- date of hearing(s)
- disposal method
- date of the final result.

1.4 Constraints on Data Collection

Some of the difficulties encountered during the collection of data for this project included the following:

1. Non-availability of data on the ages of children arraigned before the court. This made it impossible to investigate the correlations between the seriousness of the charges, the disposal methods, and the ages of the accused children.
2. Lack of consistency in the system of recording data in the court registers and files. Besides the lack of data on ages, for example, there were numerous entries such as "subject's name unknown" and "repatriated to unknown." Such inadequacies greatly impeded the data-recording process. Additionally, many records for the months of October, November, and December were unavailable, as the files were still with the magistrates and therefore inaccessible.

2 SURVEY RESULTS

Data was analysed both qualitatively and quantitatively. To ensure objectivity, the results were categorized according to separate themes as follows.

2.1 Number of Cases

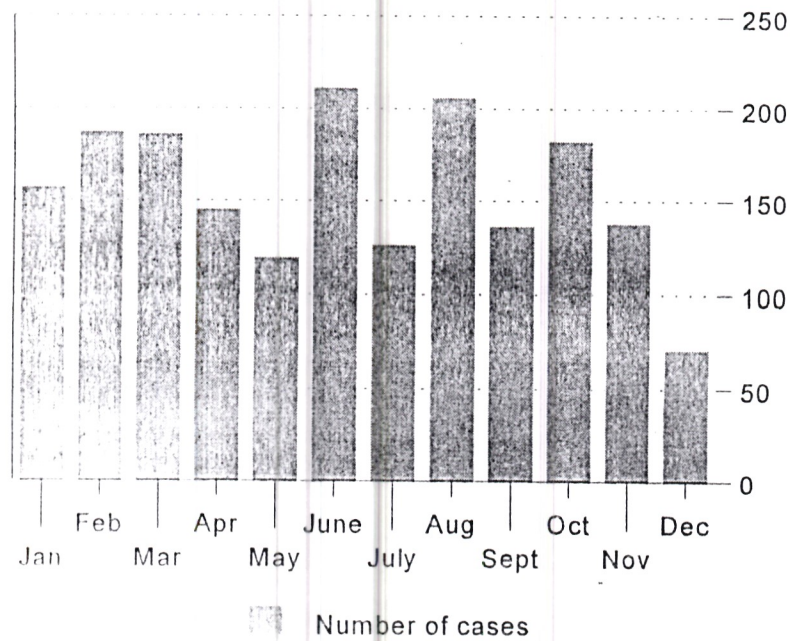
A total of 1,864 cases passed through the juvenile courts during 1997. The months of June, August, and February recorded the highest number of cases in that order. Table 1 below gives a summary of the total number of cases each month, along with each month's percentage of the year's total cases and the percentage increase or decrease in that month compared to the previous month.

Table 1: Frequency of cases by month and percentage

Month	Total Cases	%	% Increase or Decrease
January	157	8.4	
February	187	10.0	+19.1
March	186	9.9	-0.05
April	145	7.7	-22.0
May	119	6.3	-17.9
June	211	11.3	+77.3
July	126	6.7	-40.3
August	206	11.0	+80.0
September	136	7.2	-34.0
October	182	9.7	+33.8
November	138	7.4	-24.1
December	71	3.8	-48.5

children in the dock

Figure 1: Month-to-month frequency of cases



Taking into account the inadequacy of the court records, there appears to be no clear correlation between quantity of cases and time of year. For example, the number of cases recorded fell by almost 20% from January to February, but there is no data to suggest the reason for this. In March, the number of cases remained almost the same as in February but decreased by about 22% in April and by 18% in May. Again, there is no data to suggest why this happened.

Of particular interest is the dramatic 77% increase in the number of cases from May to June followed by a 40% drop in July. Given that the great majority of children taken to the juvenile court are street children, a possible reason could have been the Inter-Governmental

survey results

Authority on Development (IGAD) meeting held in Nairobi in July. The increased arrests may have been an attempt by the police to clear Nairobi of its most visible sign of poverty before the arrival of foreign dignitaries. However, this cannot be the reason for the sharp 63% rise again in August or the almost 40% rise in October after a drop of more than 35% in September. It could simply be that arrests are made in an erratic manner because the government has no clear policy on street children.

The figures for December, which drop by almost half compared to the preceding and following months, are also intriguing. They suggest either that the Christmas season produces unusual goodwill among the police or that it simply distracts them. However, the overall accuracy of the data is questionable.



A street boy arrested after allegedly being caught stealing wheel caps

children in the dock

Table 3 below shows the numbers and gender ratios of arrests at the various police stations in Nairobi.

Table 3: Police stations and gender ratios of arrests in Nairobi

Police Station	Girls	Boys	Ratio	Totals
Central	74	801	1:5.2	875
Kilimanj	12	117	1:9.7	129
Kamukunji	13	109	1:7.2	122
Mulhanga	39	70	1:1.8	109
Parklands	11	81	1:7.4	92
Dangari	10	53	1:5.3	63
Buru Buru	21	25	1:1.9	46
KICC	0	46	—	46
Kasarani	8	25	1:3.1	33
Railways	3	25	1:8.3	28
Langata	1	27	1:27.0	28
Shauri Moyo	12	15	1:1.3	27
Karen	17	10	1:0.6	27
Ngong	1	23	1:23.0	24
Kileleshwa	0	21	—	21
Embakasi	11	8	1:0.7	19
Mulhangari	6	12	1:2.0	18
Kabete	5	11	1:2.2	16
Gigiri	2	6	1:3.0	8
Spring Valley	1	5	1:5.0	6
Jogoo	0	3	—	3
Totals	247	1,493	1:6.0	1,740

survey results

As Table 3 shows, the gender ratios of arrests varied widely from police station to police station. Only six out of 21 stations had ratios within 25% of the average. The two extremes were KICC, where no girls at all were arrested, and Embakasi, where three girls were arrested for every two boys. Embakasi is the only station where there were more arrests of girls than boys, but seven other stations had ratios of less than three boys to every girl, i.e. more than 50% lower than the average.

However, there is no apparent correlation between the locations of police stations and the variations in gender ratios. Two of the stations with the highest ratios of boys to girls (Langata and Ngong) are located on the outskirts of the city, but so are the stations with the lowest ratios of boys to girls (Embakasi and Karen). Similarly, stations located close to major slum areas had both higher than average boy to girl ratios (Kamukunji, Railways) and lower than average ones (Kasarani, Kabete). The high variations and apparent randomness of gender ratios may once again indicate a lack of consistent policy on the street children problem.

2.3 Areas of Arrest

Police stations in Nairobi can be grouped into six main categories according to the characteristics of their "catchment" areas. An analysis of the common characteristics of each area may help us to understand what draws street children, the majority of juvenile suspects, to certain locations rather than others.

Areas near the city centre

Central Police Station recorded by far the largest numbers of arrests of children. Its 875 arrests were almost seven times as many as the station with the second largest number of arrests (Kilimani) and accounted for more than half of all the arrests of children in Nairobi

during 1997. The location of Central Police Station — in the busy city centre — is the most likely cause of these high arrest figures. Street children come to this area because the presence of tourists, shoppers, and commuters means they can earn money by begging, hawking, collecting waste paper, or committing petty crimes.

Kamukunji Police Station, located at the other side of the city centre, recorded the third largest number of arrests of all police stations in Nairobi. It is located in a densely populated *jua kali* and wholesale business district comprising Kaloleni, Maringo, and Pumwani areas. These areas have many formal and informal markets which lure children in the hope of picking up odd jobs, begging, or shoplifting.

However, the other police stations located in the downtown area — KICC and Railways — made few arrests (only about 2.6% and 1.5% respectively). This may be due to the fact that these are both much smaller stations than Central and Kamukunji. In addition, they are located in a part of the city that contains major government offices such as the Office of the President, the Treasury, the Central Bank, and other sensitive facilities, which are heavily patrolled by security forces. As a result, street children steer clear of these areas.

Mixed commercial and residential areas

Pangani and Parklands police stations are both in or near areas of mixed commercial and residential use. Parklands ranked fifth in the number of arrests, while Pangani was sixth. However, Parklands made 46% more arrests than Pangani, probably due to its proximity to the busy and affluent Westlands shopping centre. Westlands has a large municipal market and many fashionable shops and restaurants. Pangani, on the other hand, is a less affluent area and has no major municipal market.

Affluent residential areas

Muthaiga, Gigiri, Spring Valley, and Karen police stations are all located in exclusive residential areas far from the city centre with little or no commercial activity. Residents are mostly higher-echelon professionals and managers, diplomatic personnel, and tycoons. With few shops, no markets, and little foot traffic, these police stations mostly recorded few arrests.

The exception is Muthaiga. With 109 arrests, it ranked fourth among all police stations. It is located next to Mathare Valley, one of the largest and poorest slum areas in Nairobi, and one might expect that the cause of the high arrest rates is that poor children from Mathare go into Muthaiga to beg or steal. However, according to a former juvenile court magistrate, Mr. Eric Ogwang, this is not the case:

More often than not, children [arrested in affluent residential areas] . . . are those whose parents live and work within the well-to-do areas, as employees of the rich. The children who live in the slums are normally attracted to shopping centres, open air markets, and the city centre.

Middle income residential areas

Kileleshwa, Kilimani, and Ngong police stations serve areas that are basically residential but less affluent than Muthaiga, Karen, Gigiri, and Spring Valley. Residents are mainly professionals, managers, and entrepreneurs, and include a high proportion of expatriates.

Kileleshwa is fairly close to the city centre, while Ngong is on the outskirts of the city, but both registered a low number of arrests. On the other hand, Kilimani, located about 5 kilometres west of the city centre, registered the second largest number of arrests overall. This

children in the dock

can probably be explained by its proximity to Kenyatta Market, which is one of the largest municipal markets outside the city centre and has long been a magnet for children from the nearby Kibera slums.

Middle to lower income residential areas

Buru Buru, Shauri Moyo, and Jogoo police stations are located in heavily populated residential areas inhabited mostly by lower-middle-class families (office workers, blue collar workers, small traders, *jua kali* entrepreneurs). There is a high proportion of relatively low-cost, high-density accommodation. These areas have their own small business districts, shopping centres, and markets.

The arrest rates at the stations in these areas varied greatly. Shauri Moyo recorded nine times as many arrests as Jogoo, while Buru Buru recorded almost twice as many as Shauri Moyo. The reasons for such wide variations are not clear.

Outskirt areas

The outskirts areas are located far from the city centre but still within the Nairobi urban agglomeration. The police stations at Embakasi (near the Jomo Kenyatta International Airport), Kasarani (half way between Nairobi and the satellite town of Ruiru) and Kabete (near the University of Nairobi's College of Agriculture) qualify as outskirts stations. These mixed use areas contain peri-urban villages, industrial centres, commuter housing, and squatter settlements.

The number of arrests at police stations in outskirts areas appears to depend on the station's proximity to a slum. Kabete Police Station, which is located in a rural area, recorded only 16 arrests, while Kasarani, which is close to the sprawling Ngomongo, Kariobangi, Korogocho, and Githurai slums, had more than twice that number.

survey results

Tables 4a and 4b give a month-by-month breakdown of the number of children arrested at each police station in Nairobi during 1997.

Table 4a: Arrests by police station and month (January to June)

Station	Jan	Feb	Mar	Apr	May	June
Central	67	89	76	67	7	130
Kilimani	1	3	5	2	7	0
Kamukunji	17	10	8	19	34	14
Muthaiga	11	10	12	4	16	10
Parklands	5	32	4	12	4	4
Pangani	4	5	21	5	0	8
Buru Buru	4	8	10	2	3	4
KICC	1	3	2	7	23	14
Kasarani	6	0	2	2	2	5
Railways	0	1	16	7	0	0
Langata	1	1	2	1	0	2
Shauri Moyo	4	3	2	5	2	2
Karen	4	2	2	1	1	7
Ngong	1	0	1	0	0	7
Kileleshwa	8	0	3	2	0	0
Embakasi	2	0	2	5	3	2
Muthangari	1	4	1	0	1	0
Kabete	1	0	2	1	2	1
Gigiri	0	2	0	0	2	3
Spring Valley	No data available					
Jogoo	0	0	0	2	0	0

Table 4b: Arrests by police station and month (July to December)

Station	July	Aug	Sept	Oct	Nov	Dec
Central	59	119	100	53	86	22
Kilimani	9	6	3	77	7	9
Kamukunji	7	3	3	2	3	2
Muthaiga	4	10	9	6	6	11
Parklands	1	3	0	21	4	2
Pangani	5	1	0	3	10	1
Buru Buru	4	5	1	3	0	2
KICC	0	4	1	1	0	2
Kasarani	0	5	4	3	3	1
Railways	0	3	0	0	1	0
Langata	0	17	1	0	1	2
Shauri Moyo	2	2	1	3	1	0
Karen	2	2	0	1	5	0
Ngong	9	0	1	1	4	0
Kileleshwa	1	0	0	0	0	7
Embakasi	2	1	0	2	0	0
Muthangari	0	5	2	4	0	0
Kabete	4	2	2	1	0	0
Gigiri	0	1	0	0	0	0
Spring Valley	No data available					
Jogoo	0	0	1	0	0	0

2.4 Months and Charges Compared

The most common charge brought against minors was vagrancy. At the time of compiling the data for this report, Cap 58 of the Laws of Kenya defined a vagrant as “a person having no fixed abode and not

giving a satisfactory account of himself.” More specifically, the law described a vagrant as:

a person lodging in or about any verandah, pavement, sidewalk, passage, out-house, shed, warehouse, store, shop or unoccupied building, or in the open air in or about a cart or vehicle or wandering abroad . . . to beg or gather alms.

The Vagrancy Act has since been repealed, but the police can still take children into custody on grounds that they are “in need of care and protection” or “in need of protection and discipline.”

The Vagrancy Act gave police officers the power to arrest anybody found in the streets who was unable to give a “satisfactory” account of his or her activities. It is not surprising that almost 80% of the children arrested were charged with vagrancy. However, it is very difficult to determine whether a child has “no fixed abode.” Though many children live permanently on the streets, many others go home to their families at the end of the day. Serious criminal charges such as burglary and assault were rare, only about 0.5% each. This shows that street children are not the dangerous criminals that many members of the public imagine.



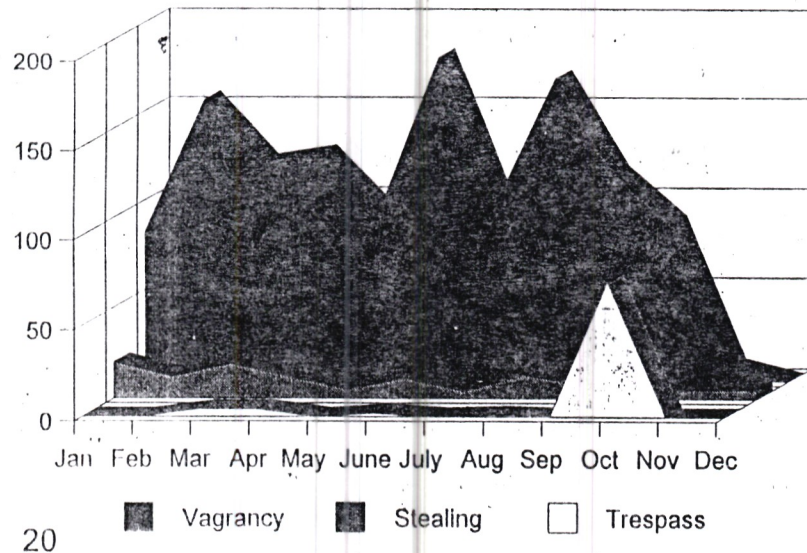
Street children are poor children, not criminals

children in the dock

Table 5 on the following page compares the charges preferred in Nairobi during each month of 1997. As can be seen, there was a lot of variation in the monthly figures for some offenses. For example, there were over 100 arrests for vagrancy in six of the twelve months, yet in November they fell to only eight, and in December there were none at all. The figures for trespass are even more remarkable. Throughout the year, the arrests of children for trespass never rose above four per month, except in the month of October when the number rose to 74, more than 18 times that of the next highest month. Almost 90% of arrests for trespass were made in one month.

The charge of hawking, though a much rarer charge in general (most children charged with hawking are taken to the City Council Court) shows a similar bulge. Over 70% of all charges were recorded in January. In fact, all the arrests took place in January and February. There is no evidence to suggest the causes of these variations. In small samples, however, such variation is not unexpected.

Figure 3: Monthly variations in arrests for vagrancy, stealing, and trespass



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■ Vagrancy ■ Stealing □ Trespass

Table 5: Charges by month

Charge	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Totals	%
Vagrancy	82	156	121	126	93	180	99	168	115	87	8	0	1,235	70.97
Stealing	26	20	20	16	7	5	9	20	8	6	15	8	170	9.77
Trespass	0	0	4	4	0	2	0	1	0	74	0	0	84	4.82
Breaking	1	2	3	2	13	0	5	2	3	2	4	1	38	2.18
Possession of narcotics	2	4	3	2	0	1	4	2	7	5	1	0	31	1.78
Hawking	17	7	0	0	0	0	0	0	0	0	0	0	24	1.37
Assault	1	1	2	0	0	1	1	0	0	1	2	0	9	0.51
Defilement	2	1	2	0	0	0	0	3	1	0	0	0	9	0.51
Burglary	1	0	0	0	1	2	4	1	0	0	0	0	8	0.45

2.5 Gender Ratios Based on Type of Charge

As Table 6 below indicates, there were many more boys than girls on each charge, but the ratios ranged widely, from a low of 1:2 (assault) to a high of 1:27 (trespass). Four charges registered no girls at all (breaking, possession of narcotics, defilement, and burglary). These are four of the most serious charges, which is not surprising given that boys are generally socialized to be more aggressive than girls.

The surprise is the ratio for charges of assault, which had the lowest number of boys compared to girl. Assault is normally thought of as an aggressive crime, but no details were available on the circumstances, and in law assault need not be a very violent act. Many of the girls charged with assault may have been domestic servants accused of mistreating children in their care.

Table 6 : Gender ratios for nine commonest charges

Charge	Girls	Boys	Totals	Ratios
Vagrancy	213	1022	1235	1:4.8
Stealing	17	153	170	1:9
Trespass	3	81	84	1:27
Breaking	0	38	38	—
Possession of narcotics	0	31	31	—
Hawking	6	18	24	1:3
Assault	3	6	9	1:2
Defilement	0	9	9	—
Burglary	0	8	8	—
TOTALS	242	1,366	1,608	1:5.6

2.6 Vagrancy and Stealing Charges by Area

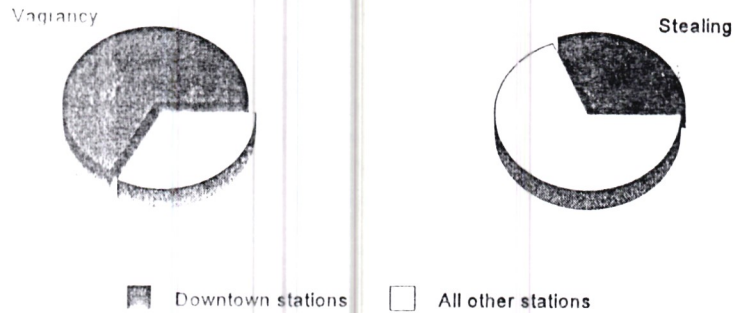
Most children arrested on the two commonest charges — vagrancy and stealing — were arrested in the city centre. Central Police Station recorded 692 arrests for vagrancy, about 56% of all arrests on this charge. At the other downtown stations — Kamukunji, KICC, and Railways — another 135 arrests for vagrancy were made. Thus, the downtown stations together accounted for more than two-thirds (66.9%) of all vagrancy arrests. The large number of street children who gravitate to the city centre accounts for the preponderance of vagrancy arrests downtown stations.

It might also be expected that stealing charges would show a similar pattern, not only because of the larger numbers of street children downtown. The busy city centre, with heavy foot traffic and numerous shops, presents many opportunities for petty theft

However, the proportion of arrests for stealing recorded at the downtown stations, though high, was less than half that for vagrancy. As usual, Central Police Station led the way, with 29 arrests for stealing recorded in 1997. This represents almost 25% of all stealing charges. At the other downtown stations, another eight arrests for stealing were made in total. Thus, the downtown stations together accounted for just under one-third (31.4%) of all arrests for stealing.

Outside the downtown area, the largest numbers of arrests for stealing were made at Muthaiga (15), Kasarani (9), and Embakasi (8), but these stations recorded much lower ratios of vagrancy compared to stealing. In the downtown area, there were more than 22 vagrancy arrests for every one arrest for stealing. At Muthaiga, however, the ratio was just over 4 to 1, at Kasarani 3.7 to 1, and at Embakasi only 1.7 to 1. The average ratio for all stations was just over 10 to 1.

Figure 4: Proportions of arrests for vagrancy and stealing



In the middle to lower income areas, Buru Buru recorded a vagrancy to stealing ratio of 4:1 and Shauri Moyo of 18:1. Jogoo no vagrancy charges but 4 for stealing. It was the only station with more charges for stealing than vagrancy. Commercial areas showed highly varied results, Pangani registered a stealing to vagrancy ratio of 1:1.3 (one of the lowest) while Parklands had a ratio of 1:30 (one of the highest).



Plain-clothes policemen arrest street kids in downtown Nairobi

The significance of these ratios, given the small sample and unreliability of some data, is difficult to determine, as are the reasons for the variations. Table 7 below gives a full account of the numbers of these two charges at each police station disaggregated by gender.

Table 7: Vagrancy and stealing charges by police station

Stations	Vagrancy	F	M	Stealing	F	M
Central	385	42	343	22	1	21
Kamukunji	92	7	85	4	1	3
Parklands	59	5	54	2	2	0
Muthaiga	44	22	22	13	1	12
KICC	28	0	28	3	0	3
Buru Buru	21	9	12	5	0	5
Pangani	18	4	14	12	1	11
Shauri Moyo	18	9	9	1	0	1
Karen	16	9	7	1	0	1
Kilimani	11	4	7	1	0	1
Embakasi	8	8	0	6	2	4
Kasarani	8	2	6	3	0	3
Ngong	8	0	7	1	0	1
Kileleshwa	7	0	7	0	0	0
Gigiri	6	2	4	0	0	0
Muthangari	6	2	4	0	0	0
Langata	5	1	4	1	0	1
Railways	5	2	3	0	0	0
Spring Valley	4	1	3	0	0	0
Kabete	2	0	2	1	1	0
Jogoo	0	0	0	3	0	3

2.7 Disposal Methods

The term *disposal method* refers to the form in which a court case is resolved. Disposal methods were recorded for 920 cases but not for the remaining 944, either because they were not resolved or data was missing. The defectiveness of the court records made it impossible to ascertain whether the results were still pending in these cases.

The most common disposal methods were:

- repatriating the child to his or her home
- sending the child to an approved school
- discharging the child or withdrawing the case
- placing the child in the care of relatives or guardians
- sentencing the child to corporal punishment
- fining the child.

The least desirable disposal methods are fining and corporal punishment. Fining is unrealistic, as it is usually impossible for street children, the majority of juvenile offenders, to pay a fine. This is presumably why fining was the least used disposal method in 1997, accounting for less than 2% of all cases. As for corporal punishment, this is a form of physical and emotional abuse and is unlikely to do more than "harden" a young offender. Nevertheless, it was used for boys more often than placing them in the care of a guardian. Almost one in every four boys for whom disposal records were available was caned. This punishment is prohibited by law in the case of females.

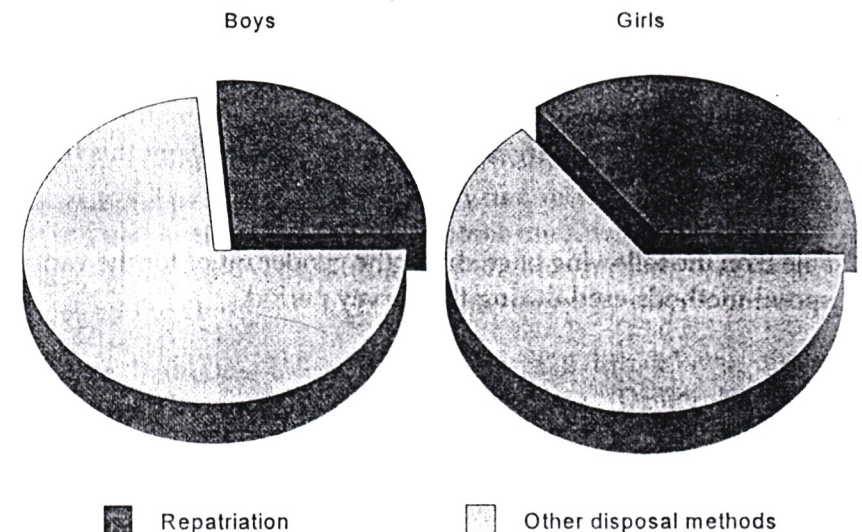
The disposal method preferred by magistrates is repatriation of children to their homes. Repatriation was used in almost 40% of the 920 cases for which disposal records were available. Girl children were more likely to be repatriated. Of 144 cases involving girls,

repatriation was used in 80 cases, more than 55%. By contrast, repatriation was used in only 36% of the cases involving boys. Boys were sent to approved schools almost as often as they were repatriated. There were 280 cases of repatriation of boys compared to 275 cases where boys were sent to approved schools.

As most street children have a compelling reason for leaving home in the first place, it is highly questionable whether repatriation stops them frequenting the streets. Repatriation assumes that the child has a home to go back to, but it is not clear how the courts establish this.

According to former juvenile court magistrate Ogwang, repatriation is mostly used where it is clear that a child came to Nairobi from a rural area. According to the magistrate, some repatriated children successfully settle back into their homes, especially if they have not yet internalised street culture.

Figure 5: Repatriation compared to other disposal methods



The second most preferred disposal method was the approved school. Approved schools are operated by the Children's Department of the Ministry of Home Affairs and National Heritage under the Children and Young Persons Act. Basically, they are boarding schools for young offenders. Children committed to approved schools are meant to receive their normal education together with the discipline and rehabilitation needed to correct their behavioural problems. However, a detailed study of conditions in the approved schools — and the fate of children who pass through them — would be necessary to determine whether this disposal method is beneficial or detrimental.

Males are more than twice as likely to be sent to approved schools as girls (35% of boys compared to 16% of girls). This may be influenced by traditional gender concepts (for example, the belief that boys are more aggressive and need stricter discipline than girls), but more important is the fact that there are 11 approved schools for boys but only one for girls.

It would also be logical to assume that approved schools are resorted to for more serious crimes. Because of their gender socialization, boys are likely to commit more of these. However, the disposal statistics for vagrancy charges (see chapter 2.8 below) put this theory into question.

Table 8 on the following page shows the gender ratios for the various disposal methods used during the survey period.

Table 8 : Disposal methods and gender ratios

Disposal Method	Girls	Boys	Totals	Ratios	% of Total Cases
Repatriated	80	280	360	1:3.5	39.1
Committed to approved school	23	275	298	1:11.9	32.3
Discharged/acquitted	11	98	109	1:8.9	11.8
Placed in care of parent/guardian	20	55	75	1:2.7	8.1
Caned	1	60	61	1:60.0	6.6
Fined	9	8	17	1:0.8	1.8

2.8 Disposal Methods for Vagrancy Charges

Since most children by far were arrested for vagrancy, the manner in which this charge was handled is of particular interest. Because of its broad application and the wide scope it gave to the police, the charge could be used to arrest children guilty of no other "crime" than being found on the streets. This made it the favourite charge for dealing with street children in terms of their "nuisance value."

The disposal methods used for vagrancy charges were similar in proportion and gender distribution to those for all charges. However, the proportion of vagrancy cases disposed of by repatriation or committal to an approved school was consistently between 8% and 10% higher than the overall disposal rates, while the rates of fining and caning were several times lower. This suggests that magistrates viewed the charge of vagrancy more leniently than other charges.

Table 9 on the following page gives a breakdown of disposal methods by gender for vagrancy cases. Disposal records for September to December were not available.

2.9 Discretion of Magistrates

In the juvenile justice system, the magistrate is expected to determine each case on its own merits. Consequently, he or she has great latitude in deciding on the disposal method to be used. Along with the lack of legal representation for children and their extremely limited understanding of the law or the procedures of the court, this makes it doubtful whether the rights of accused children are being upheld in practice. Since the magistrate can be assumed to base his or her decision largely on the prosecution evidence, the question of the accuracy, thoroughness, and fairness of their reports is also a matter of concern.

2.10 Juvenile Remand Homes

Juvenile remand homes are established under Section 36 of the Children and Young Persons Act. They are under the administration of the Children's Department of the Ministry of Home Affairs and National Heritage, which also oversees the running of approved schools. There are a total of ten juvenile remand homes in Kenya. They are located in Nairobi, Nakuru, Kiambu, Murang'a, Likoni, Nyeri, Kakamega, Eldoret, Kericho, and Kisumu. The function of juvenile remand homes is to hold children who have been charged with offenses until their cases are settled.

During 1997, a total of 559 minors were committed to the Nairobi Juvenile Remand Home awaiting resolution of their cases. Table 10 on the following page gives a monthly breakdown of children committed to the Nairobi Juvenile Remand Home from January to August 1997 compared to the monthly arrest figures. Remand data for the last four months of the year was not available.

Table 9: Disposal methods for the charge of vagrancy

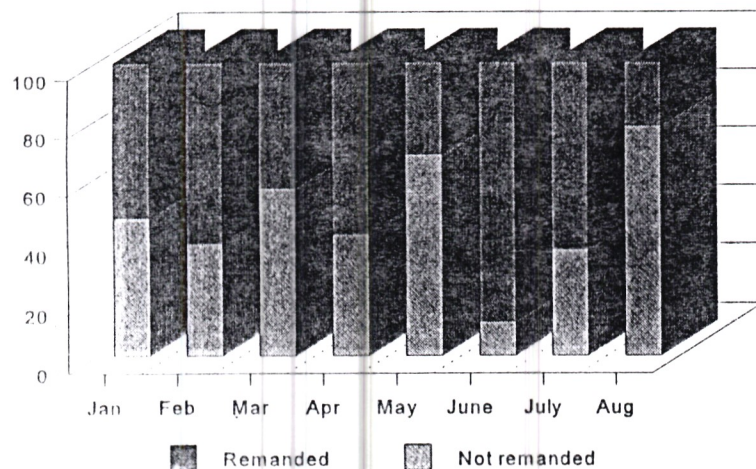
Month	Repatiation		Approved school		Discharge etc.		Parent/ guardian		Caring		Fine	
	F	M	F	M	F	M	F	M	F	M	F	M
January	10	24	1	25	1	7	2	5	0	4	0	0
February	11	59	4	39	3	14	3	5	0	2	0	0
March	14	25	4	34	0	4	4	10	0	1	0	0
April	10	29	7	51	0	7	5	6	0	6	0	1
May	8	36	3	13	0	9	1	1	0	0	0	0
June	2	14	0	1	0	4	0	0	0	0	0	0
July	7	21	2	28	1	3	0	7	0	0	0	0
August	17	24	1	39	1	19	4	17	0	0	0	0

Table 10: Arrests and remands by month (Jan-Aug)

Month	Arrests	Number Remanded	% Remanded
Jan	138	78	56.5
Feb	174	108	62.1
Mar	173	75	43.3
Apr	146	86	58.9
May	107	34	31.8
June	201	178	88.6
July	109	70	64.2
Aug	193	43	22.3
Totals	1,241	672	54.1

In most months for which data was available, a majority of children were remanded. Only three months, March, May and August, had remand rates below 50%. June had the highest rate. Only 23 of the 178 children arrested that month (about 13%) were not remanded.

Figure 6: Remanded and unremanded cases



The main reason for these high remand rates is slow disposal of cases. The length of time children are held in remand varies, as each case is heard individually and at different times. This makes it difficult to categorize remanded cases systematically. However, it is obviously a serious injustice to confine a child in remand simply because a case cannot be quickly resolved. The injustice is multiplied when the charge is a vague one such as vagrancy.

In the period for which records were available, a total of 295 cases were listed as "pending judgement," meaning that the children in question had been held in remand awaiting resolution of their cases for at least six months. This is impossible to justify. The suffering caused to children who are remanded for long periods is irreparable, yet the supposed goal of the juvenile justice system is rehabilitation.

Table 11 below gives a breakdown of pending cases for the first eight months of 1997. Data for September to December was not available.

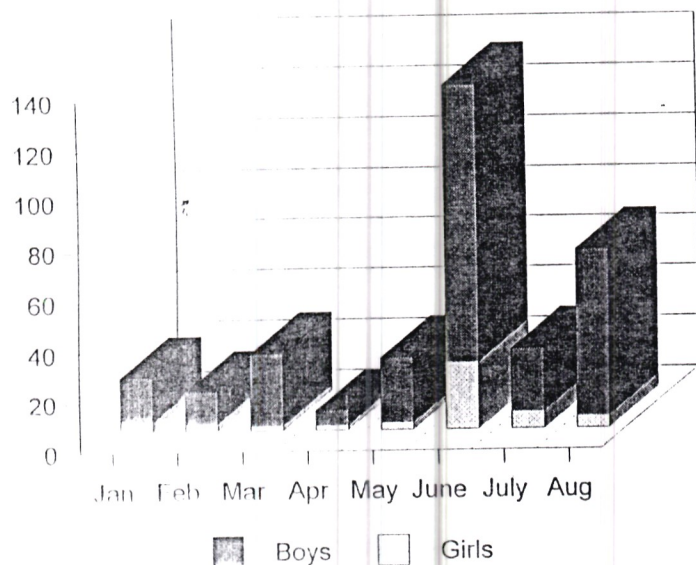
Table 11: Pending cases by month and gender

Month	Pending Cases	%	Girls	Boys	Ratio
Jan	22	6.4	4	18	1:4.5
Feb	16	4.6	3	13	1:4.3
Mar	31	8.9	2	29	1:14.5
Apr	8	2.3	2	6	1:3.0
May	29	8.4	3	26	1:8.7
Jun	137	39.6	27	110	1:4.1
July	32	9.3	7	25	1:3.6
Aug	71	20.5	5	66	1:13.2
Totals	346	100	53	293	1:5.5

There does not seem to be any gender bias in the pending cases. The ratios of girls to boys vary considerably from month to month but average out at only half a percentage point lower than the gender ratio of all cases, a statistically insignificant variation in a sample of this size.

As figure 7 below illustrates, the number of pending cases rises sharply in June, falls equally sharply in July, and rises by about half as much again in August. Given the incompleteness and uncertainty of the court records, in particular the missing data from the last several months of the year, it is not possible to analyse the reasons for these strange variations.

Figure 7: Pending cases January to August 1997



Conditions in the juvenile remand homes are poor. Basic facilities are run-down, supplies of water are inadequate, and sanitary facilities are inoperative. Due to overcrowding, children in remand are not separated according to age or severity of offense. This permits older children to abuse and exploit younger ones and children with serious criminal tendencies to influence those who may have committed no crime except being homeless. Furthermore, the staff running these homes do not have any specialised training in handling children.

Clearly, it is even more important with children than with adults to avoid unnecessary incarceration while cases are waiting to be resolved. However, the present juvenile court system appears to be unable to resolve cases involving children without extensive use of remand homes. In an alarming number of cases, children spend long periods in remand.

Table 12 below presents a comparison of total cases, cases resolved at the first hearing, cases resolved after more than one hearing (after some time spent by the subject in remand), and cases still pending at the time the data for this report was collected.

Table 12: Resolution of cases

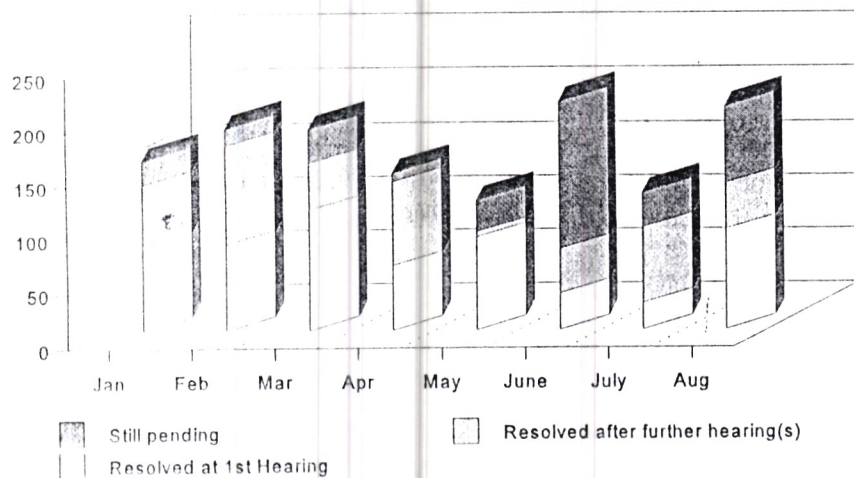
Month	Cases	Resolved at 1st Hearing	Resolved after Further Hearing(s)	Still Pending
Jan	157	79	56	22
Feb	187	79	92	16
Mar	186	111	44	31
Apr	145	59	78	8
May	119	85	5	29

children in the dock

Month	Cases	Resolved at 1st Hearing	Resolved after Further Hearing(s)	Still Pending
Jun	211	33	41	137
July	126	24	70	32
Aug	206	92	43	71
Totals	1,337	562	429	346

As table 12 shows, only 42% of cases were resolved at the first hearing, while 58% were remanded in custody. Of these, a disturbing 80% were still pending after six months in remand.

Figure 8: Resolution of cases



3 CASE STUDIES

Statistics can give a very precise picture of reality, but they cannot provide the human dimension or the experiential and emotional truth. This can only come from the stories of individuals who have lived through the reality. For this reason, ANPPCAN Kenya's researchers interviewed several children who have passed through the juvenile justice system. The personal narratives of six of them are given below. In order to protect the identity of these young informants, fictional names have been used.

3.1 Esther

Esther was born in 1982 in a village near Nairobi. When she was still very young, her parents separated and her mother moved to the city looking for work. Esther grew up in the Mathare slum, where her mother sells fruits and vegetables on the streets. This does not earn much, and Esther had to leave school in standard six, as her mother could not afford to pay school fees. She joined a group of other girls on Luthuli Avenue in the downtown area and lived as a prostitute.

The girls' day started at 6 am with a bath at Uhuru Park followed by bhang smoking and begging for coins in the streets. But at night, a "new day" started. This is when Esther and her friends "went road darling," offering sex to men in their cars who drive to certain parts of the city centre after dark looking for young girls. On a good night, Esther could make 200 shillings, but when business was poor she had to bribe night watchmen to protect her from street boys.

"One night in 1995, after I had been living this way for about a year, some friends and I were attacked at 4 am by a group of policemen while we were asleep. They beat us up, threw us into a car, and took us to Central Police Station. At the station, the police wrote out statements which they forced us to sign. The statements said we had

been found soliciting, which was not true. We were then taken to the cells and locked up with adults. Conditions were terrible. The cells were filthy and smelly and infested with lice, and everyone slept on the floor without any blankets.”

After a day in this place, Esther and her friends were taken to the juvenile court, charged with prostitution, and remanded to Kabete Remand Home. Nothing was explained to them, nor were they given any opportunity to speak on their own behalf.



Young girls like Esther are openly exposed to the dangers of street life

“Life at Kabete was very hard. We were forced to do hard labour on the farm and fed meagrely on half-cooked food. We were often given severe beatings for no reason. The beds were broken and infested with lice and bedbugs.”

After two weeks, Esther was taken back to court, and the charge of prostitution was repeated to her. This time she denied the charge, pointing out that she had not been found committing any crime but was arrested while she was asleep. This seemed to make the magistrate angry, and he committed her to Kirigiti Approved School for a term of seven years!

Life at Kirigiti was even worse than at Kabete. Thorough beatings were the order of the day for every petty misdeed and often for no reason at all. The worst punishment was reserved for anyone who tried to escape, which often happened. In such a case, the girl was not only beaten up but also shaved with a piece of broken bottle or a broken light bulb.

Conditions in the dormitories were atrocious. Because of overcrowding, each small bed was shared by three girls. The beds were infested with lice and bedbugs, and there were scarcely any blankets. The girls were forced to do hard labour on the farm, and anyone who did not work hard enough was punished by being made to kneel on stones for hours or denied food for the whole day.

In the end, Esther spent only two months at Kirigiti. Her mother learned where she was from another girl and managed to get permission to take her back to her rural home. Esther was supposed to return to Kirigiti, but she never did. She became bored by village life and after a short while she ran away to Nairobi and rejoined her friends on the streets. However, she did not enjoy the life there and

dreaded being arrested and taken back to Kirigiti. After about four months, she heard about a rehabilitation centre for street girls and joined it. She now lives at the centre and is taking a dress-making course. Going to this project was a "God-sent opportunity," she says, and has made her feel like a "normal person" again.

3.2 Peter

Peter was born in a town in Rift Valley Province in 1982. He was a rowdy boy who was always getting into trouble at school with teachers and other pupils. He was often called out during school assemblies and beaten for one misdeed or another, but his behaviour did not improve. Eventually, his mother was called to the school and told about his behavioural problems, but instead of talking to him, she too started to beat him. This is when he decided to leave home. At nine years of age, he went to Nakuru and lived by collecting garbage, begging, and doing occasional odd jobs.

The first time Peter was arrested was only a few weeks after he arrived in Nakuru. It was September, and he was sitting with other street children at about 7 pm on a Sunday evening cooking food around a fire. Suddenly, they were surrounded by several men who Peter learned later were plain-clothes policemen.

"One of them tried to grab me, but I ducked out of the way and almost escaped. However, another man tripped me as I tried to run away. I was taken to the police station and put in a cell along with other children, some from the same group and others I didn't know. The cell was the most cramped and congested place I had ever been. I was kept there for three days before I was taken to court."

At the court, he was charged with being in possession of a knife. This was not true, but Peter pleaded guilty because he did not want to be taken back to the cells. He was then taken to a place he calls Langa Langa Approved School, where he was kept for about two months. It was a very overcrowded place where all the children slept in a large dormitory. This was so congested that at night they all had to change sides together. The food was *ugali* and *sukuma wiki* every day, and it was very poorly prepared. The *sukuma wiki* was old and yellow, and the *ugali* was barely cooked.

Soon after his release, he was arrested again in Nakuru and charged with snatching a bag. This time he pleaded not guilty. He was then taken back to Langa Langa, where he stayed for a while. When he was asked where his parents lived, he lied about the place, hoping to be released without having to go home. He was taken to this place, but when he could not identify his parents, he was taken to Kericho to a place he calls the Boma.

"This was a very harsh place where many of us children were confined and made to work in the fields like robots. We worked in teams and were all made to move together so as to keep to the same tough pace. Anyone who made a wrong move, fell out of step, or lagged behind was thoroughly beaten. We were whipped with rubber bullwhips and sometimes made to hang on to a window bar while being whipped."

Peter cannot remember how long he stayed at the Boma, but one day he managed to slip away and walk to Gilgil, from where he hitched a ride to Nairobi and began to live on the streets. After a while, he was arrested in a swoop by city askaris and sent to an approved school in Nyeri. He managed to escape from this facility as well and get back to Nairobi.



Police officers should be trained to treat children kindly, not brutalise them

Peter lived in Nairobi in a “chuom” with other street children until 1997. In that year, he was able to enter a rehabilitation project for street children and has been there ever since. He attends the project’s informal school and would like to be an airline pilot, though he knows he may not be able to realise this dream.

Peter wishes he had never been arrested and has only bitter memories of the mistreatment and torture he underwent in the three institutions where he was kept, especially the Boma. He feels that he never did anything to deserve the punishments he received.

3.3 Ruth

Ruth was born in Kangemi in 1984. Her parents died in 1992, and as she had no relatives to go to she was forced to start living on the streets, begging coins from passersby and scavenging from the rubbish bins at the city market on Muindi Mbingu Street. She had just turned eight years old at the time.

“I lived on the streets for about four years, getting along one way or another, but one night in 1996 I was arrested along with some other girls at Jeevanjee Gardens, where we spent the nights. The police pounced on us while we were asleep and dragged us into a lorry, where we were verbally abused. The girls who talked back were beaten up badly.”

They were taken to Central Police Station and locked into a small dark room that was already packed with others. The room stank terribly of human waste, and Ruth felt suffocated and sick. After a day in this place, she was taken to the juvenile court, charged with an offense she did not understand, and ordered to be taken to an approved school. Nobody explained anything to her or asked her

any questions. When the charge was read to her, she kept quiet, and she still cannot understand why she was committed to an approved school.

She spent the next year at Kirigiti Approved School, which she remembers with terror. Sometimes she was stripped naked and whipped all over her body. Many other girls suffered the same punishment. Her experiences at Kirigiti still haunt her, and she cannot remember anything good about the time she spent there.

Ruth managed to slip away from Kirigiti in 1997 and went back to Jeevanjee, but she lived in terror of being arrested again. After a few weeks, she went to a street children's rescue centre, where she now lives. She is finally in a caring and loving environment where she can learn and grow, but she has been deeply scarred by her experience of the juvenile justice system and fears the police and the courts more than anything else.

3.4 Michael

Michael is now 14. He was born in Kakamega but came to Nairobi with his mother after she and Michael's father divorced. He was the only child, but his mother remarried in Nairobi, and Michael now has a baby stepsister. His mother makes her living selling second-hand clothes. Michael was twelve years old and was in standard 4 at a primary school in Kangemi when he was arrested.

"I had been sent to buy milk, but on the way to the kiosk I met a group of boys being chased by the police. Before I knew what was happening, I was grabbed and slapped around by one of the policemen and then thrown into a Mahindra like a sack of potatoes."

Michael was then driven to Ruaraka Police Station and put into a cell with a mixture of adults and other children. The next day he was taken to court and charged with robbery. He cannot identify which court it was but says it was not the juvenile court, as he knows where that is. The magistrate asked him how old he was, told him he was charged with robbery, and asked him what he had to say for himself.

"I tried to explain that I had only gone out to buy milk and knew nothing about any robbery, but the magistrate sentenced me to two months in jail. I was not asked where I lived, where I went to school, who my parents were, or any other question that could have proved I was not a robber."

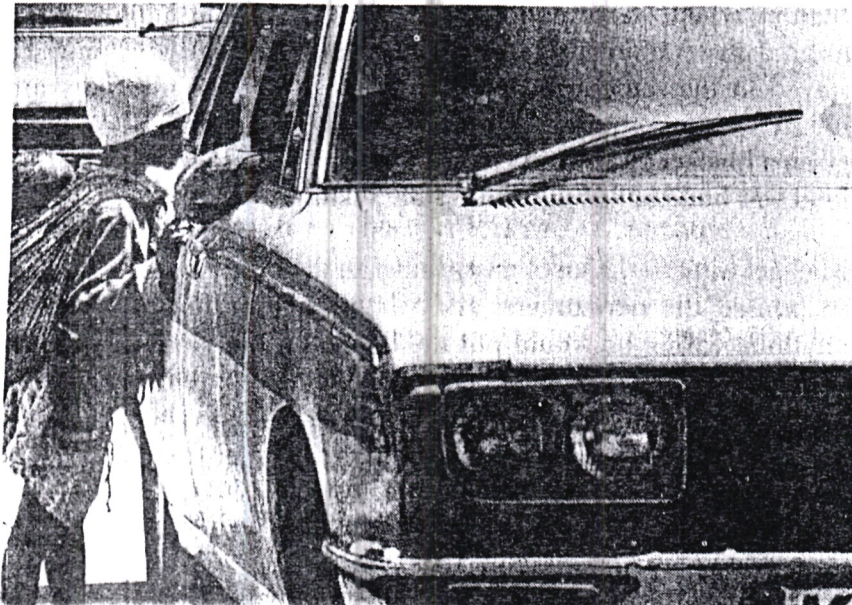
After the sentencing, Michael was taken back to Ruaraka Police Station, where he stayed for the whole two months doing odd jobs around the station such as mopping floors and cutting grass. He stayed in the same crowded cell, which was cold and filthy and infested with mosquitoes. He slept on the bare floor and was never given a blanket or anything to lie on or cover himself with. The only food was half-cooked ugali and stale sukuma wiki.

Michael witnessed a lot of nasty things in the cell. The adult inmates sodomised the newcomers, and whenever an adult prisoner did anything wrong he would put the blame on the young boys, who were then beaten by the policemen. Michael's parents were never informed about his arrest, and during the two months he spent at the police station he was not visited by any relative or friend.

3.5 Jane

Jane was born in Naivasha to a single mother. She was never able to go to school, as her mother could not afford to send her. Jane's mother was an alcoholic and often spent everything on drink.

Finally, Jane ran away and went to live with an her older sister, a charcoal burner in Molo. Jane tried to help her sister, but the work was too hard for a small girl. So after a while she went to stay with an aunt in Eldoret. Her aunt worked for the municipal council and at first was able to take care of her, but then she broke her leg and was fired by the council. Jane decided to go to Nairobi and look for work. This was in 1992, when Jane was about eleven years old.



Many street girls also have to care for infant siblings

"In Nairobi, I made my way to Jeevanjee Gardens in the city centre and stayed there for about a week with some older children, begging and scavenging for food. However, the following Saturday night we were all rounded up by the police and taken to Central Police Station, where we spent the weekend in one dirty cell. We were about fifty children all together in the cell. We slept on the floor and ate nothing but ugali. There was no bathroom, and we were often beaten by the police."

On Monday morning, Jane and the others were taken in a lorry to the juvenile court. They appeared before a magistrate nicknamed Katumbo ("the stomach") whom they had already heard a lot of bad things about. He was notorious for his harshness. He expected everyone to plead guilty and never entertained any kind of "story" from an accused.

The role of the other court officials was not clear to Jane. Their job seemed to be only to pass papers back and forth to one another. Katumbo lived up to his reputation and committed Jane to an approved school on the charge of vagrancy. She pleaded for mercy, but the magistrate did not even acknowledge her.

Jane was held with other children in a cell in the courthouse until late in the afternoon. They were then put in a lorry and driven to a remand home near Wangige. This was the best of the facilities in which Jane was held. The work was fairly light and conditions were decent. However, she was kept here for five years without having any idea of when she would be released or why she was held for so long.

In 1997, Jane was suddenly transferred to Kirigiti Approved School in Kiambu. She found this facility "slack," and after two days she escaped through a hole in the fence and went back to Nairobi. But

five years away from the city was a long time, and many things had changed. The number of street children was much higher, the "rules" were tougher, and police harassment was constant.

Jane was now one of the older children. During the day, she begged and scavenged from the fast-food restaurants around Jeevanjee Gardens, and at night she practised "road romancing." However, after only three weeks she was arrested again and once more found herself in front of Katumbo. She was convicted of vagrancy and sent back to Kirigiti.

After a few months, she managed to escape from Kirigiti again. This time, she went to the Globe Cinema roundabout on the other side of the city centre from Jeevanjee. Life here was more peaceful, with less harassment from the police or from older street boys. On the other hand, it was harder to get money or find food. One day, she was told about a street girls "rescue" project by a friend and went there. She was accepted into the programme and now spends her nights there. She attends the project's informal school in the morning but still spends her afternoons begging in the city for pocket money.

3.6 Paul

Paul was born in 1983 in Kiambu. He is the sixth child in a family of eight. His family left Kiambu for Korogocho in Nairobi when Paul was six years old. His parents hoped they could find work in the city.

Paul's mother started a small business selling cooked food to construction workers. His father found a job as a community paralegal officer, but this is voluntary work, and the family depends entirely on the little that Paul's mother earns from her business. She

is very hard working and manages her earnings carefully, and she succeeded in putting all her children through primary school, except for Paul.

Paul attended a primary school in Dandora, a low income suburb in Nairobi, from 1991 to 1996. But then he dropped out of school in Standard 5 because, he says, the teacher picked on him and beat him for no reason. His parents knew about these problem but instead of discussing with the teacher, they beat Paul and sometimes chained him to his bed. Finally, he ran away from home to the city centre, where he started selling plastic shopping bags outside supermarkets. He worked at this job during the days but went back to Korogocho at night and stayed with friends.

"I was arrested on Tom Mboya Street in the city centre in October 1997. I had gone to town to sell paper bags as usual, and at lunch time me and a group of other boys bought chips with the money we had earned. We were walking along the street with our chips when we met some policemen, who grabbed us and pushed us into a lorry. We were not told why we were being arrested. We were made to lie flat on our bellies with other children piled on top of us in the same position."

The lorry went around town picking up other boys as well as adults, and when it was full they were all taken to Muthaiga Police Station. Here the children were put in separate cells from the adults, but the cells were very dirty and smelly, and they had to sleep on the floor with no blankets.



Police swoops on street children are a common occurrence in Nairobi

The next morning Paul was given tea and bread for breakfast and then transferred to Buru Buru Police Station. He was asked where his parents lived but refused to say. The conditions at Buru Buru were even worse than at Muthaiga. The children shared cells with

adults, and the cells were infested with lice. The food was scanty and half-cooked. After one week at Buru Buru, Paul was taken to court and ordered to be held at Kabete Juvenile Remand Home until his parents were traced. As far as he is aware, he was not charged with any offense.

“I life at the remand home was unbearable. We were forced to work in the farm, digging and harvesting the whole day. The food was in very small portions and badly prepared, and there was very little water for washing.”

After about two and a half weeks, Paul was taken back to court only to be returned to Kabete because neither of his parents came to court. After another week, he was brought to court again, and this time his elder brother Waithaka was there. Paul was then charged with vagrancy and pleaded guilty. The magistrate released him into the care of his brother and warned that if he was ever arrested again he would be sent to Shimo la Tewa Borstal Institution in Mombasa.

After being released, Paul went back to live with his family in Korogocho and stopped going to town to sell bags. Asked what he learned from the experience he says: “I learned nothing since according to me going to town is not an offense. I never stole anything or committed any crime.”



Police officers often act more like child abusers than guardians of the law

4 RECOMMENDATIONS

The UNCRC, the OAU Charter on the Rights and Welfare of the Child, and the Beijing Rules provide guidelines for the protection of juveniles deprived of their liberty. These international instruments give a clear picture of what should be included in any juvenile justice system. Based on these guidelines, the following are ANPPCAN Kenya's recommendations regarding the improvement of the juvenile justice system in Kenya:

- Any approach aimed at promoting the well-being of a child should deal with each child in a personalised way. Instead of viewing the child as a small adult and treating him or her as a criminal, the core purpose of the juvenile justice system should be to direct the child out of the criminal justice system as soon as possible either to a welfare programme or a rehabilitation programme run by competent staff with a vigilant approach to the protection of the rights of the child.
- The involvement of the family and the community is of vital importance. If a child does end up going through the criminal justice system, he or she should be tried by a competent authority, with legal representation and parental assistance, in an atmosphere of understanding conducive to his or her best interests. The child should be able to participate in decision-making. The proceedings should take place within time frames which are appropriate to children, and with no unnecessary delays.
- In deciding on the outcome of the matter, the presiding officer should ask for a report on the social circumstances surrounding the case and should be guided by a set of principles that include

proportionality, concern for the best interests of the child, and commitment to the least possible restriction of the child's liberty.

- Depriving children of their liberty, either when awaiting trial or after sentencing, should be a measure of last resort and should always be for the shortest possible period of time. ANPPCAN Kenya proposes a maximum of one month's confinement before the finalisation of any case involving a juvenile.
- Mechanisms for ensuring adherence to the above principles need to be built into the system. It is vital, therefore, that the most important principles of the UNCRC, the OAU Charter on the Rights and Welfare of the Child, and the Beijing Rules be written into the text of any legislation dealing with juvenile justice issues. Ideally, a set of guiding principles including guidelines on sentencing should be set out at the beginning of such legislation.
- There is an urgent need to improve methods of recording and storing data related to juvenile arrests and court hearings. This can only be accomplished if all parties and institutions involved work to remove inadequacies in their data systems. For example, the ANPPCAN Kenya survey was greatly impeded by the deficient quality of court records. It would have been extremely useful to have had a record of children's ages in order to determine which age groups law officers tend to arrest and what crimes children of varying ages are more likely to commit. The absence of this basic piece of information is particularly surprising given the obvious importance of knowing a child's age when deciding how to deal with him or her.
- Most children do not know that they have legal rights. Even in the few cases where a child may be aware that children have

rights under the law, he or she is unlikely to know what these rights are or how to exercise them. There is an urgent need, therefore, to provide children, especially those in need of special protection, with basic education on their rights and on the juvenile court system. There is a need to reinforce awareness and respect for these rights among the public at large and in particular among those working in the police and the juvenile justice system. A children's rights education programme must be carried out using channels and means of communication that are appropriate for the target audience.

- As numerous reports in the media have made clear, many Kenyan policemen, rather than dealing with young offenders professionally, act more like child abusers. Children suspected of committing petty crimes have been brutally beaten and in some cases shot by police. Cases of police brutality against children must be dealt with in a way that discourages this type of conduct as strongly as possible. Police officers who have no respect for the rights and welfare of the children they deal with must know that when they violate children's rights they will be disciplined appropriately. Education on children's rights along with training in the best methods of dealing with child offenders should be incorporated in all police training programmes.
- Given that the majority of the children who pass through the juvenile justice system are from the streets, which in essence means out of school, there is need to thoroughly review the education delivery system in Kenya, particularly primary education, to make it universally free and compulsory. This would be in conformity with the UNCRC to which Kenya is a signatory, which guarantees all children the right to education.

children in the dock



Street children demand their rights

